HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 102 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, April 24, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1535)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting number 102 of the Standing Committee on Industry, Science and Technology.

Pursuant to the order of reference of Wednesday, December 13, 2017, and section 92 of the Copyright Act, we are continuing our review of the Copyright Act.

Today we have with us, from the Canadian Alliance of Student Associations, Michael McDonald, Executive Director. From the Canadian Association of Research Libraries or CARL, we have Susan Haigh, Executive Director, and Mark Swartz, Program Officer. From the Union des écrivaines et des écrivains québécois we have Suzanne Aubry, President, and Laurent Dubois, General Manager. From the Canadian Research Knowledge Network, we have Carol Shepstone, Past Vice-Chair and Chief Librarian at Ryerson University.

We will start with the Canadian Alliance of Student Associations.

You have seven minutes, sir—or is it five?

Mr. Michael McDonald (Executive Director, Canadian Alliance of Student Associations): I'll take seven. That's a great trade.

Good afternoon, Mr. Chair, esteemed committee members, fellow witnesses, and members of the gallery.

My name is Michael McDonald. I'm the Executive Director of the Canadian Alliance of Student Associations, otherwise known as CASA. CASA is a non-partisan organization that represents over 250,000 students at colleges, universities, and polytechnics from across the country. We advocate for a post-secondary education system that is affordable, accessible, innovative, and of the highest quality for all.

Thank you for the invitation to speak today about the Copyright Act. Copyright law has a profound impact on students in Canada. We believe the statutory review presents an excellent opportunity to reflect on what has worked, and to address what has not.

Students purchase, study, and create copyrighted material daily. It will surprise no one at this hearing to learn that students are seeing first-hand the rapid shift towards digital content delivery and the adoption of new learning tools. For example, open access journals are ensuring that more content than ever before is available freely. In many academic fields, including the STEM fields, these journals are now becoming the primary way through which new research is shared.

Open educational resources are also reshaping the academic materials landscape. These high-quality, open-source materials allow for content, such as textbooks, to be available to students and educators for free. Such materials have immense potential to be adapted to meet the needs of diverse students and diverse audiences. British Columbia and Ontario have already committed to providing funding for the creation of OER textbooks, and the savings students have seen for these programs have been growing daily.

Both open access and open educational resources are modern innovations whose returns for students, in both cost savings and quality improvements, are only just being realized. While we understand this is outside of the Copyright Act itself, we believe it is crucial to understand what educational content will look like in the years to come when reviewing the act and the arguments presented here today. They also present a valuable opportunity for the federal government to foster further innovation and learning.

A further facet of the modern learning environment has been fair dealing. The official inclusion of education as a component of fair dealing in 2012 clarified the rights articulated by the Supreme Court. While this right has helped reduce some of the transactional costs for students associated with accessing content, we think it is important to give special attention to how fair dealing has improved the quality of the post-secondary education experience provided here in Canada. The inclusion of education as a component of fair dealing creates a mechanism that facilitates the legitimate exchange of small amounts of information. This encourages a diversity of sources and perspectives to be used. In an academic setting, to use a metaphor, this is an intellectual lubricant. This can be content delivered by professors in classrooms, but it can also be through the peer-to-peer learning experiences fostered in study groups and group presentations. This is the organic teaching that is so hard to quantify, and we think is so precious to protect.

CASA believes that fair dealing for educational provisions in the Copyright Act must remain intact. We also recommend that, to further strengthen the system, the committee examine any punishments for bypassing digital lock systems and consider their removal, since these restrict users' ability to exercise their legal rights over that content.

It is critical to note that, throughout this era of digital disruptions, students, professors, and post-secondary institutions continue to pay for academic materials. According to household survey data from Statistics Canada, average household spending on textbooks alone was over $650 in 2015 for university texts and $430 for college texts. These expenditures are clear evidence of the continued use and purchase of effective published materials.

This leads us to discuss the Copyright Board. CASA believes that the current regime overseen by the Copyright Board does have some flaws. Transparency, openness to feedback, and honesty are values that we would expect from Facebook, and these are values that we would expect also from our tariff system. While post-secondary education tariffs are presented as an agreement between rights holders and the post-secondary education institutions, we believe that it's important that the primary consumer of these materials—students—be considered. Students pay for these tariffs, either directly, through ancillary fees administered by provincial ancillary fee structures, or indirectly, through operations budgets. It is the cost they are expected to bear and one that we do not believe is being adequately considered. CASA believes that any fee assessed on students must clearly be explained and justified. This is something we would ask at an institution and it's something we expect from the federal government as well.

Access Copyright fees, so far, have lacked many of the attributes that we would expect from normal service provision. First, these fees sometimes seem to be determined at random. The fees for university students were $45 in 2011 to 2013, and were adjusted to $35 in 2014 and 2017, while the fee offered on the website was $26.

Students are concerned about what kind of product they have this kind of variability. The attempts that have been made to more clearly understand this fee have been met by opposition from Access Copyright, when requests for this transparency have been made by the Copyright Board.

At it stands, there's no clear rationale why these fees apply to all students equally, especially considering the different licensing needs of faculties. We believe that university administrations are excellent decision-makers when deciding what kind of content to purchase in these environments.

We're also extremely concerned that the fees proposed in other sectors by Access Copyright have so far been found to be much higher than deemed appropriate by the Copyright Board. This is deeply troubling, and we're calling on the committee to ensure that the Copyright Board provides clear, public rationale for why fees exist and to demand public accounting for those who wish to operate tariffs.

CASA hopes that the committee, through it's consultations and deliberations, keeps in mind the importance of preserving flexible, adaptable copyright systems that serve the needs of both creators and users.

Students appreciate the committee's dedicated work on this complex subject.

I look forward to answering your questions.

● (1540)

The Chair: Thank you very much.

We are now going to move on to the Canadian Association of Research Libraries, and Susan Haigh, the executive director.

[*Translation*]

Ms. Susan Haigh (Executive Director, Canadian Association of Research Libraries): Hello. My name is Susan Haigh and I am the Executive Director of the Canadian Association of Research Libraries.

[*English*]

The Canadian Association of Research Libraries, or CARL, is the national voice of Canada's 31 largest research libraries, 29 of which are located in Canada's most research-intensive universities.

With me today is Mark Swartz, a visiting program officer at CARL, and copyright manager at Queen's University.

Research libraries are deeply committed to enabling access and use of information, to fostering knowledge creation, and to ensuring a sustainable and open Canadian scholarly publishing system.

Our remarks today will focus largely on fair dealing.

The use of fair dealing in the post-secondary context follows an extensive body of Supreme Court guidance on its correct interpretation. Since 2004, the Supreme Court of Canada has made it clear that fair dealing is a user's right, and that this right must be given a "large and liberal interpretation".

With three supportive Supreme Court decisions on fair dealing since 2004, and the 2012 changes to the Copyright Act, Canada has achieved well-balanced legislation and jurisprudence, landing between the more restrictive version of fair dealing in the U.K. and the more permissive fair use approach of the U.S. The U.S. approach, in place since 1976, applies explicitly to purposes such as, and here I quote, "teaching (including multiple copies for classroom use), scholarship, [and] research".

In the interest of maximum flexibility and future-proofing, we think Canada could look to add the words "such as" to the fair-dealing purposes given in section 29 of our act.

We wish to stress to the committee that the current application of fair dealing in the post-secondary context is responsible, informed, and is working.

Canada's university libraries recognize that educational fair dealing is a right to be respected, used, and managed effectively. Universities have invested substantially in copyright infrastructure. They have expert staff dedicated to copyright compliance and to actively educating faculty, staff, and students on their rights and responsibilities under the act.

The Supreme Court ruled in 2015 that Copyright Board tariffs are not mandatory, and university libraries are working under this assumption. I note that the Federal Court's controversial 2017 decision in the Access Copyright v. York University case appears to be contrary to the Supreme Court's ruling. However, the York decision is under appeal, and will hopefully be reversed.

Research libraries are often responsible for administering copyright clearances on campus. Increasingly, the works copyright offices deal with are open access scholarly content, in the public domain, openly available on the web, or already library-licensed for use in learning management systems. This leaves a relatively small portion of works that will either be shared under fair dealing or will require a one-time licence. We routinely seek such licences when the test for fairness is not met.

It is clear that mandatory tariffs are not necessary to good copyright management. Choice is important to us. For some institutions, blanket licences, assuming they're based on reasonable rates, are practical. For others, active local management with transactional licensing as needed is the preferred route.

Some parties are portraying fair dealing as the cause of diminishing revenues for creators. This is a fallacy. The shift from paper to electronic delivery of educational content over the last 20 years has fundamentally changed the way that works are accessed and used, and such shifts inevitably impact how rights holders are compensated. They don't necessarily impact how much rights holders are compensated. Despite these pressures, Statistics Canada reported last month that the profit margin of the Canadian publishing industry is a healthy 10.2%.

We believe that direct support outside of the copyright system, such as grants to creators and publishers, is more appropriate in this time of transition. The public lending right program administered by Canada Council is one example of an alternative form of support.

Our final point is that there are forward-thinking changes that should be considered in this review.

We urge you to clarify that technical protection measures can be circumvented for non-infringing purposes. Likewise, we urge you to add language so that contracts may not override the provisions of the act and prevent legal uses.

These, and suggestions related to crown copyright, indigenous knowledge, and some other areas, will be included in our forthcoming brief.

In conclusion, research libraries support the concept of balance in copyright, which dates right back to the original Statute of Anne in 1709.

Fair dealing in the Copyright Act is serving its intended purpose, enabling fair portions from works of creativity or scholarship to be drawn upon within learning environments, thereby stimulating innovation and the creation of new knowledge.

Merci. We look forward to your questions.

● (1545)

The Chair: Thank you very much.

We are now going to move to the Canadian Research Knowledge Network. Ms. Shepstone, you have up to seven minutes.

Ms. Carol Shepstone (Past Vice-Chair, Chief Librarian, Ryerson University, Canadian Research Knowledge Network): Thank you for the opportunity to join you today. On behalf of the members of the Canadian Research Knowledge Network, I want to thank each of you for your work on this important statutory review. My name is Carol Shepstone, and I am past vice-chair of the board of the Canadian Research Knowledge Network or CRKN.

CRKN is a partnership of Canadian university libraries from across 10 provinces and encompassing two official languages. The 75 institutions that currently participate in CRKN include all research universities as well as the vast majority of teaching universities. We collectively serve over one million students and 42,000 faculty. Twenty-nine of CRKN's members are also members of the Canadian Association of Research Libraries, and all our members are also member institutions of Universities Canada.

Through the coordinated leadership of librarians, researchers, administrators, and other stakeholders in the research community, CRKN undertakes large-scale content acquisition and licensing initiatives in order to build knowledge and infrastructure as well as research and teaching capacity in Canada's universities. As such, CRKN provides an important voice in understanding the evolving scholarly creation and communication landscape within higher education in Canada.

The members of CRKN support a balanced copyright law that recognizes both the rights of copyright owners and the fair-dealing rights of our users. We are pleased to add our voice to other higher education sector stakeholders, including Universities Canada and CARL, in supporting the preservation of fair dealing, particularly as it pertains to educational uses.

Leveraging the purchasing power of all universities in Canada, CRKN negotiates and manages licences for digital scholarly content on behalf of its member libraries at an annual value of $125 million. The vast majority of this scholarly journal content is authored by faculty as part of their academic research expectations. In the current scholarly publishing model, faculty as creators typically provide these research outputs to journals for no financial compensation, and then journal publishers sell this research output back to universities through library subscriptions such as those licensed through CRKN.

CRKN negotiates licences that ensure access and terms of use that are valuable to students and faculty, including the ability for universities to use this material in course packs and e-reserve systems, as well as permitted uses that fall within the Canadian Copyright Act.

As the national licensing consortium in Canada, CRKN facilitates investment in key Canadian scholarly publications across a variety of disciplines. Through subscriptions to journals and purchases of e-books, CRKN members provide faculty and students with valuable Canadian content. An annual investment of $1.3 million includes a subscription to Canadian Science Publishing journals and access to the e-books of the Association of Canadian University Presses. In addition, CRKN members have made one-time investments of more than $11 million to secure perpetual access to the Canadian Electronic Library e-book collection, and $1.5 million for access to digital, historical *Globe and Mail* content.

CRKN also partners with Canadian publishers to advance new models of open access scholarly publishing. Through our long-term relationship with the Érudit Consortium, which began in 2008, students and faculty have access to Canadian French scholarly content. This has evolved into a collaborative partnership including both Érudit and the Public Knowledge Project, and in 2018 the Coalition Publi.ca initiative was launched as a model of sustainable Canadian scholarly production. CRKN members have committed more than $6.7 million to support this initiative over the next five years.

Through our support of and now merger with Canadiana.org, CRKN members have also facilitated the digitization, access, and preservation of Canadian heritage materials. Members currently invest nearly $1.3 million annually, and have made one-time investments totalling $1.8 million to support this unique historic content.

Overall, CRKN university members are annually committing $2.9 million to Canadian content licences, and over CRKN's 19-year history have made $15 million worth of one-time investment in purchasing Canadian content.

These investments demonstrate a commitment to Canadian scholarly publishing and to a robust and healthy research infrastructure in Canada. CRKN members support scholars as creators and authors, respect the rights of copyright owners, and at the same time ensure that students and researchers, as users, have access to essential international scholarly content.

Thank you, and I look forward to your questions.

● (1550)

The Chair: Thank you very much.

[*Translation*]

The last presentation will be by Mr. Dubois, of the Union des écrivaines et des écrivains québécois.

Mr. Laurent Dubois (General Manager, Union des écrivaines et des écrivains québécois (UNEQ)): I will give my presentation in French.

Mr. Chair, vice-chairs, members of the committee, to begin we would like to thank you for the opportunity to address you today and present the brief prepared by our association, which represents 1,650 writers in Quebec.

My name is Laurent Dubois and I am the General Manager of our association. With me is Ms. Suzanne Aubry, who in addition to being our association's President is also a writer and scriptwriter herself.

We will use the five minutes allotted to talk about the economic situation of professional writers in Canada, which we consider alarming. We will also alert you to how the situation has worsened as a result of the introduction of numerous exceptions in the 2012 Act.

In the brief we have submitted and that was provided to you, we make recommendations for the act to evolve in everyone's interest in the coming years. At the end of our presentation, we will of course be pleased to answer any questions you may have.

In our opinion, a copyright law should not be limited to technical aspects. It should above all be part of a clear political vision with specific goals. We would like the committee to use this opportunity to answer the questions that are on our minds.

Does the government want to foster Canadian cultural expression, encourage creativity, and offer its citizens access to a rich, diverse culture that enhances the quality of life of Canadians, their independence of thought, and their understanding of the world?

Or would the government rather reduce the quality of writing to the lowest common denominator, and let Canadians believe that they can access all cultural content free of charge, modify it as they wish, and allow the Hollywood and Silicon Valley steamroller to dictate their commercial laws to us while impoverishing local artists? We hope these questions will inform you in the difficult task that awaits you over the coming months.

It is important to remember that the concept of copyright is not merely an economic one. There is copyright and the economic right to royalties, but there is also the idea of moral rights that we would like to put on the table today. This concept seems to be missing from the current act. We would like to discuss it.

Moral rights refer to the idea that an artist has the right to grant or withhold permission for their work to be used, disseminated or even altered. With its many exceptions, the 2012 act has stripped many artists and writers of their income.

I do not want to be more dramatic than necessary, but I will just give you some figures. In Canada, the average annual income of a professional writer is $12,879. In Quebec, the median income was $2,450 in 2008, and about the same right now. As a result, professional writers in Canada could be an endangered species.

Ms. Suzanne Aubry (President, Union des écrivaines et des écrivains québécois (UNEQ)): Thank you, Mr. Dubois.

I would like to mention first that my father was the head of the Ottawa Public Library for roughly 30 years. If he were here today, we would have a good discussion because we obviously do not share the libraries' position, and I will now explain why.

Writers provide a significant part of the raw material for the education system, raw material that Stephen Harper's Conservative government wanted to make available to users, free of charge, based on so-called "fair dealing" as defined by the Supreme Court in 2014. The absence of a clear requirement for educational institutions to pay authors for the use of their works has been unprecedented. Under section 29 of the act, it is legal to use a copyrighted work provided that it is used for one of the purposes mentioned in this section. I do not want to put you to sleep, so I will not list all the uses mentioned in this article, but there is no definition of the portion of a work that may be used without copyright violation.

As expected, this vague wording has led to litigation involving the relationship between creators and users. The number of court cases has multiplied in recent years, including the Université Laval case, which decided of its own accord and without approval from the courts or the act that fair dealing allowed them to reproduce a short excerpt of up to 10% of a work or an entire chapter. Its policy states that "every time one intends to use a short excerpt, it is important to take the greatest advantage of the possibilities on offer."

These multiple, vague exceptions have reduced collective management revenues for writers and publishers by $30 million since 2012. Payments from secondary licences accounted for up to 20% of writers' income before the educational exception was introduced.

These exceptions are numerous and very prominent in the 2012 act. They have significantly reduced revenues for creators.

While the introduction of specific measures for the education sector seems commendable to us, and we certainly support education and access to works, that access must be clearly defined. The integrity of works is no longer guaranteed, artists' moral rights are violated, and piracy is encouraged in a sense, through section 29.21, for instance, which allows users to use or modify copyrighted content for non-commercial purposes. Further, the act's sanctions for violations are so weak that they are not a deterrent.

I will let Mr. Dubois finish up.

● (1555)

Mr. Laurent Dubois: In closing, as you may expect, we hope that this review will be an opportunity to put forward a clear policy that defines copyright and the way the government wants society to evolve in this regard in the years ahead.

Thank you for your attention. We will be pleased to answer your questions.

The Chair: Thank you very much.

We will start with you, Mr. Longfield. You have seven minutes.

[*English*]

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Mr. Chair.

Thank you, everybody, for coming. We have a large panel today. We're trying different formats in this study to get as many diverse opinions in front of us as we can, and sometimes on the same panel, as we've seen today.

I have some questions. I'm going to start with Ms. Shepstone, because you were talking about new forms of delivering material. I've been looking at the copyright review that was just completed in Germany. Australia is in the process of completing a similar review. They're comparing themselves to other countries.

Something that comes up again and again is the new delivery format and whether current legislation is changing quickly enough to address that. In a previous meeting I asked about Cengage as one of the forms of delivery. Could you maybe speak to what new forms of delivery we need to look at in our study and how we could try to make sure we cover the proper legislation around that?

Ms. Carol Shepstone: I could do my best.

What might be really valuable is to continue to consider a very flexible act that can adapt to changing technology and changing forms of delivery. I think that would add some longevity, most certainly.

If I recall correctly, your question was regarding Cengage, wasn't it?

● (1600)

Mr. Lloyd Longfield: Yes, Cengage.

Ms. Carol Shepstone: I think that's a really interesting model. As I understand it, it's a way for students to access directly a whole collection of textbooks. I think some of the challenges within our institutions or within universities are around the assignment of those textbooks. It would need to be in a fairly collaborative model, I think, with our faculty instructors certainly.

Mr. Lloyd Longfield: Along those lines of having the policy of proving that you have purchased course material in order to get your mark statements, Michael, you might have an opinion on that or anybody else cross the table.

Mr. Michael McDonald: Indeed, I would have an opinion on that. As it's currently laid out, and this includes textbooks, you have no mandate to have to purchase that textbook. There are models that individuals can adopt, whether that be shared or working with another colleague, or going to the library and very often checking out a textbook, that we think are essential for ensuring, again, that post-secondary education remains accessible to anybody from whatever income background they may have.

Broadening the question to something like a Cengage model, if you're improving educational outcomes, and especially when the content is delivered in a more effective fashion, then we're definitely interested in going down those kinds of routes.

Where we have some concerns are with bundling policies, where you end up in a situation where a textbook and the course materials to be used in an instructional way become tied together, which increases the prices of the materials. Very often this prevents the resale of a textbook that might exist.

These are problematic and we think, again, it's a mechanism that is trying to prop up a textbook that may not be as valuable anymore because some of the intellectual material in it may have been reproduced in an open educational resource. We do think those other options must remain at the disposal of any kind of professor or instructor who's determining those courses.

But this is promising. We think there is good new content.

Mr. Lloyd Longfield: Great. Thank you.

It strikes me that we have librarians in the room or people who represent librarians, and that there are studies out there that might help to inform our study. When we talk about the U.K. model, you have mentioned some of the differences in restrictions.

Are there some graphics, like some Venn diagrams or something like that, we could ask the universities for to show us where we are at, and the difference between Canada and some of our trading partners, and some ideas of where we could be in the future?

Ms. Susan Haigh: My sense would be that we would be very happy to provide such a thing. We can certainly do our best to research it and provide it, because I think the clarity of where we fit in the international picture is very important for the committee for sure.

Mr. Lloyd Longfield: Great.

There was a report published in Australia in March 2018 that started off with that. I found that very helpful, but one of the missing pieces was Canada, of course, because we weren't part of their study.

Going back to Ms. Aubry, you were talking about being specific in our language of exemptions. Germany was also facing that question and said that they have to be very specific on percentages of use before someone has to pay for use, the types of use, and exactly what types of people would have access to that.

When we're developing legislation, we need to keep in mind the creators and to make sure they are compensated and that the rules are fair. Do you have anything you could expand on when you were talking about being specific?

[*Translation*]

Ms. Suzanne Aubry: Thank you for your question.

We have very carefully worded the exceptions currently in the 2012 act.

I could read them out to you, but our brief provides all the details, section by section, along with our requests to clarify and repeal certain sections. That is all clearly laid out in our brief. It has also been translated into English. You received the English version at the same time as the French version.

Would you like me to say anything further in this regard?

[*English*]

Mr. Lloyd Longfield: I just thought you might have something you wanted to add to what you have given us. There was a lot information in a short period of time, but I'm trying to get an overview of where the worst parts are for us.

Mr. Dubois or anybody else.

[*Translation*]

Ms. Suzanne Aubry: I will read out the recommendations because they are very specific and they will probably give you a very clear idea of the approach we would like you to take in your review of the act.

Our first recommendation, roughly translated, is as follows:

> That Canadian Heritage define in advance precisely under which political and social project the act falls and that it measure the impacts.

● (1605)

[*English*]

Mr. Lloyd Longfield: Thank you.

The heritage piece was something that flashed for me, because we do have to make sure we're protecting Canadian heritage. I think you both said that.

I'm going to turn it back to the chair. There was some French language stuff that I'd like to bring forward, but maybe next time.

The Chair: Thank you very much.

[*Translation*]

Mr. Bernier, go ahead for five minutes.

Hon. Maxime Bernier (Beauce, CPC): Thank you very much, Mr. Chair.

My question is for Mr. Dubois.

Thank you for joining us today, Mr. Dubois.

Can you tell us what percentage of copyright fees authors normally receive for their content and publications?

Do you think percentages should be established in the legislation, or does the free market work very well?

What percentage do authors receive from the sale of a book compared to what is received by various distribution chain stakeholders such as publishers?

Mr. Laurent Dubois: Thank you for your question, Mr. Bernier.

Under a publishing agreement, an author receives 10% of the copyright fees from the sale of a book. That should be the standard contract. Unfortunately, nothing in the Status of the Artist Act requires publishers to negotiate with writers. There is no collective agreement, so every case is handled differently by publishers.

As for copyright fees that are part of exceptions, the one related to fair dealing leaves much to the imagination and creativity of the two parties, but it is rarely to the benefit of writers.

Hon. Maxime Bernier: Okay.

Does new technology, such as content digitalization, have repercussions, either positive or negative, on authors' revenues?

Mr. Laurent Dubois: That is still difficult to measure because the situation is evolving. The good old paper book is still a sure bet. However, there will definitely be an impact over the short or the long term.

Currently, that impact is felt mainly in the way people use excerpts. I am thinking of plagiarism, forms of satire or the commercial use of an excerpt used in an advertisement. We have seen all that. Technology does magnify those issues and makes it much more complicated to monitor the use of content.

Hon. Maxime Bernier: Thank you.

A few days ago, we heard from student representatives. They said they were happy with the current system and, if changes were made to it, that could lead to an increase in the cost of their studies. They think that would have a negative impact on learning, which is why they are rising against any changes in this area.

How do you see all that? Should students absorb additional costs to have access to quality material produced by authors?

Mr. Laurent Dubois: I don't know whether students should be absorbing those costs, but I don't think so. In any case, our recommendation is not directed toward that.

We represent writers, who agree with students on this issue. We want the material used in educational establishment to be regulated, with a specific cost attached to it, which cannot be the same as commercial costs. More than ever, we need literature to spread in schools and universities, and to be used by teachers and students.

On the other hand, we are asking that the oversight be precisely defined in the legislation and taken into account when the legislation is reviewed. We would like the legislation to define the terms "education" and "fair dealing". Our intention is not at all to make the content cost more. What is needed is better regulation of content to prevent prosecutions like the ones currently before the courts, whose sole goal is not to pay writers royalties. It is as if it was forgotten that the author is the source of the book. Without authors, writing content is much more complicated.

● (1610)

Hon. Maxime Bernier: So you feel that we should amend the legislation to better regulate exceptions, as you mentioned in your brief. Do you think there are no solutions that could include negotiations with universities or something like that?

Mr. Laurent Dubois: Of course, we are very open to coming to the table to negotiate. I'm sure that the Collectives Access Copyright and Copibec, in Quebec, are just as willing to come to the table to open up discussions.

For the time being, owing to the uncertainty in the law, the most likely action seems to involve the legal aspect. We would like that to be replaced with a political route and a negotiation option between user and creator partners who are not in disagreement. All creators want their content to be used, and all users want access to content. I think that is the reality. We just have to work together to find the best way to achieve it.

Hon. Maxime Bernier: So the exceptions contained in the legislation should be amended or restricted, which would have an impact on the jurisprudence. If I understand correctly, you somewhat disagree with the jurisprudence established through the 2012 legislation.

Mr. Laurent Dubois: That's exactly right. We agree that, by definition, an exception is exceptional in nature. When we see the list of exceptions in the current legislation, we feel that they do not look like exceptions. Let's say that they have lost some of that exceptional dimension.

Hon. Maxime Bernier: Thank you.

Ms. Suzanne Aubry: Mr. Bernier, in closing, I would like to say that the term "education" in section 29 should be better defined, so as to prevent the misuse of content. That is one of our recommendations.

Hon. Maxime Bernier: Great. Your report is very concise and explicit, and it will help us a great deal in our work. Thank you.

Thank you, Mr. Chair.

The Chair: Thank you very much.

[*English*]

Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and my thanks to the delegations for being here today.

It is interesting that one of the positions the government and the minister could take at the end of the day is to do nothing. This is just a statutory review. There have been no proposed amendments to the legislation. No regulatory changes have been made. There are some court challenges right now to a couple of cases.

Mr. Swartz, what happens in your field, or just as a general thing, if nothing changes and we continue the status quo, aside from maybe court interventions? What are the pros and cons of those situations? This is one of the potential outcomes of all of this work. Even if there is an intent to make some changes, our time frame in Parliament is starting to become constrained, although we don't have an election directly looming. It takes time to do this review. Ministers will evaluate that review and then submit legislation. So if it's outside the regulatory framework.... That they has to pass in the House of Commons and the Senate prior to the next election.

Mr. Mark Swartz (Program Officer, Canadian Association of Research Libraries): From my perspective, if nothing changes, universities will continue to manage copyright effectively and responsibly. We will continue to use the fair-dealing guidelines and policies we have in place, the 10% guideline you are familiar with, and continue to offer services to aid instructors in the responsible management of copyright. Many institutions now offer what are called "syllabus services", which within libraries are called "electronic reserve services". With those services, individual faculty members or instructors submit their reading lists to staff, and each item is vetted and then made available to students. Frequently, library licences are responsible for a big chunk of the stuff being made available to students.

In his remarks, Michael mentioned open educational resources. Anything that's available by open access, or even openly available on the web, is made available in that way. We also apply fair dealing, and if anything falls outside of it, we'll purchase it in e-book form in our library or we'll buy a transactional licence. There is also still print reserve, so if you can't purchase a transactional licence and it doesn't fall under fair dealing, we will put it on print reserve and students will have to come to check it out of the library. From our perspective, that's what we would continue to do. That is the good part.

As for the things we would change, there are a lot of things that are causing issues for libraries in relation to digital disruption. As mentioned, a lot of the stuff we're collecting has shifted from individual purchases of items to licences. Most of the things in a library are governed by licensing agreements. We don't have a lot of the exceptions that we would like to be available for those things. In our forthcoming brief, hopefully we will be able to discuss a few of those ideas.

● (1615)

Mr. Michael McDonald: For us fundamentally, again, there is probably going to be a legal decision that will have an impact on the nature of how fair dealing gets interpreted currently. This obviously has a significant impact on how this act will be interpreted into the future. Without a statutory decision, there is still going to be some action that will have an impact on how everyone on this side of the table will be interpreting their rights, moving forward.

On the positive side, we do think we are in a situation that has been generally beneficial to the educational material that's being provided to students. Real growth in places such as open educational resources across the country is something that you're going to see more investment in, and I do stress this. You just saw the investments in eCampusOntario this year. These are places that provide direct supports to creators to make materials that are going to be in an open format. These are things that you're seeing pioneered. Other jurisdictions are going to consider this. Open access journals, especially in a lot of the STEM fields, are dominant in discussions.

It's important also to take from this that it will have a different impact on the different content. We might be talking about, at times, a poem, but we might also be talking about scientific research or legal research. This does have significantly different impacts in all those different cases. We think it's something that overall is going to have a trend towards the positive, and in the instances where, and we fundamentally agree, creators need to be compensated, other mechanisms can be found to do so. We really support that.

Mr. Brian Masse: Ms. Shepstone.

Ms. Carol Shepstone: From the perspective of CRKN, we would continue to license material where possible and to move forward with open access collaborations and initiatives and really invest time and energy in that work.

Mr. Brian Masse: Ms. Aubry, I'm not sure who wants to answer on your behalf.

[*Translation*]

Mr. Laurent Dubois: May I ask you to rephrase your question? I think I lost something in the interpretation.

[*English*]

Mr. Brian Masse: Right now, we're doing a review. The review might not have any changes. What will transpire for you from that, or what's at risk if there aren't any changes? There's a high probability that there will not be any changes. It might just be left to some legal cases and some regulatory alterations.

[*Translation*]

Mr. Laurent Dubois: If no changes were made and everything was resolved in court, it is clear to us that the profession of writer would become very difficult to exercise in our country. The risks related to that concern cultural diversity. Do we want all cultural products to come from abroad? Do we want available books to come from Europe, and more likely from the United States?

It is important to understand that, if authors of books cannot be properly compensated, that profession could no longer interest anyone. There will always be academics, researchers and people with several professions who will continue to write and contribute to a general database, but artistic and creative writers who throw themselves into a literary work are likely to disappear.

Ms. Suzanne Aubry: I would like to complete the answer.

The spirit of the Copyright Act is to defend creators; it is a piece of legislation on authors' rights. In 2012, with all the exceptions that were introduced, it became a piece of legislation that favours users.

Once again, we have nothing against users. On the contrary, we want our work to be known and read. That's very important. However, we want that to be done fairly.

Here's what I would add. A speaker said that grants could be used to compensate authors for their work. However, we know that grants are not given to all authors, since only a third of them receive grants. To earn a decent living with their pen, writers cannot rely solely on grants.

The Chair: Thank you very much.

[*English*]

Mr. Baylis, you have seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

One of the points that has been brought up about the change in fair use in 2012 has been that it has improved education. You seem to think it has really helped the libraries and the students, and all of that. What are you doing today that you weren't doing in 2012?

Michael, I'll start with you.

● (1620)

Mr. Michael McDonald: I will defer in part to my library compatriots. You have seen a major uptick in the number of copyright experts in post-secondary institutions who are making the assessments about these things. Across the university sector, copyright offices have assumed significant roles within those institutions. They are providing the kinds of instructional education both to faculty and to students that determine the parameters they can operate under. This was an understanding, especially on the part of institutions, that they needed to be able to explain what they actually were doing with this material. This is becoming a more important request for students in general. The challenge is that intellectual property, the whole gamut of it, is becoming so incredibly important for anybody's livelihood and for the production of that.

Mr. Frank Baylis: Are you using more of it? If the law hadn't come in in 2012, you wouldn't be using something, and now you're taking access, which is helping improve your education. Is that happening because you have fair dealing there?

Mr. Michael McDonald: I think you are in an environment where there is more comfort and ability to access sources, to quote from sources, to be able to use them to say that this is something you should be able to experience in context.

Mr. Frank Baylis: Then you are using more?

Mr. Michael McDonald: I would say yes, but I'd also say that's a demonstration of the modern content-generating era, too. In the last five years, we have significantly more content that's being brought forward in every digital space.

Mr. Frank Baylis: For the libraries, how has that change impacted your ability to operate?

Mr. Mark Swartz: While you point to the change made after the last review, it actually dates from earlier than that because the Supreme Court has been providing jurisprudence on the use of fair dealing since 2004. It just took a bit of time for universities to adapt to those changes.

For us in universities and university libraries, there are a variety of benefits to having a very a liberal fair-dealing exception. For one, it really helps instructors in the way they compile course materials. They can take materials from a variety of different places and compile them all together; they can use materials on the fly; and they can build a course that really works. As we mentioned, universities have been putting together a variety of systems to help instructors do that. That's a real way it has benefited us.

A liberal fair-dealing exception also benefits researchers in a variety of ways. They can use and reuse copyrighted material in their research. In addition, we use it in the library in a number of ways as well, and inter-library loans is one.

Mr. Frank Baylis: Since 2004, you've been on this trend, if you will, to be using it more. You've been getting from the courts the interpretation that allows you to have broader use. In 2012 it was put into law. That's what I understand. Are you going in that direction?

Mr. Mark Swartz: Fair dealing did exist beforehand. In 2004, it was the CCH and law society case, which was a very significant case that started helping to establish fair dealing as a user right in Canadian law. Then there have been a number of other court cases. There were a number in 2012 as well that helped establish that.

Mr. Frank Baylis: If I'm looking at the writers, and

[*Translation*]

I will get to them soon,

[*English*]

We're in Canada, and we're interested in helping Canadian industry and our Canadian writers. How much has been taken out of their pocket? You're a purchaser of data for all students from around the world. Do you have any idea of how much you're saving from Canadian content? For example, if the government—and I don't speak for the government—were we to say, "Here's an extra chunk of money that you can only use to buy Canadian content", how much would you need to buffer up what you're taking, or what they perceive to be taken from them, without getting paid?

Mr. Mark Swartz: I can't speak for sectors other than the university sector, but for most of the courses that we process, most of the content that we're providing is scholarly content. A lot of it is from a variety of different places. The amount of Canadian content is fairly small, but it is still very significant. We get some of it through the licences from organizations like the Canadian Research Knowledge Network and others.

Mr. Frank Baylis: Would it be possible for you to go back and look to give us an idea? You don't need to answer right now, but for example, since 2004 we've used about 5%, and now it's down to 2%, or we used 5% and we paid for 5%, or now we're only paying for 1% due to fair dealings. Could we get an assessment or an idea from the universities only for Canadians?

● (1625)

Mr. Mark Swartz: Only Canadian content?

Mr. Frank Baylis: Yes, so we can try to get an idea of the impact of that. Could you provide that, please?

Mr. Mark Swartz: Yes, we can work on that.

Mr. Frank Baylis: Thank you.

[*Translation*]

I now turn to you, Mr. Dubois and Ms. Aubry.

As far as I have understood, you find that the regulations in your operating environment are unclear. It is very difficult for you to know what kind of royalties you can expect. Is that correct?

You raised another point by saying that there were too many exceptions.

Did I understand the two points you raised correctly?

Mr. Laurent Dubois: Mr. Baylis, you have understood our two points perfectly.

Thank you for the question you asked before that one. We have noted an increase in the use of content by educational institutions, but at the same time, since 2012, copyright collectives have lost $30 million in revenues.

Mr. Frank Baylis: So the writers you represent have lost $30 million.

Mr. Laurent Dubois: I am talking about copyright collectives that pay royalties to writers.

Mr. Frank Baylis: Is that the case only in Quebec or throughout Canada?

Ms. Suzanne Aubry: Throughout Canada.

Mr. Frank Baylis: That involves writers, university publications. Who is that $30 million intended for?

Mr. Laurent Dubois: Sorry, but I did not understand you very well.

Mr. Frank Baylis: You said that $30 million in royalties has been lost. Who exactly has lost that $30 million?

Mr. Laurent Dubois: Publishers and writers; in other words, the collectives that register licenses with Access Copyright or Copibec. Those license holders have lost $30 million in revenue, and that revenue represents the royalties paid out to publishers and writers.

I think you will actually be hearing from Copibec and Access Copyright representatives later.

Mr. Frank Baylis: I would like to quickly put another question to you.

I will ask you the same question I put to the witnesses representing universities and libraries. I would like to know how your royalties have changed since 2004, year by year. That would give us a good idea.

Thank you.

[*English*]

The Chair: Mr. Jeneroux, you have seven minutes and 20 seconds.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair.

The Chair: Oh, that should be five minutes and 20 seconds.

Mr. Matt Jeneroux: Oh, well, I'll go with the seven minutes and 20 seconds.

Thank you all for being here and for taking the time.

I have a couple questions in those five minutes, and I may interject to keep some of the answers brief.

In February 2015 an open access policy was implemented that essentially, after 12 months, made SSHRC, NSERC, and CIHR publications freely accessible to the public. How was your organization affected by this policy? Also, would your organization support an expansion of this policy to apply to all publicly funded research—essentially research funds that are disbursed outside the tri-council?

Ms. Susan Haigh: At this point, the open access policy applies to journal articles. The CARL has a system of open repositories within the library sector that have been developed, institutional repositories, over the course of the last many years. Basically, we were very supportive of that policy because it gives an alternative. It allows the appropriate return on research that we believe should be possible for publicly funded research. So we're very supportive of the policy, and we were able to support the implementation of the policy because we have these institutional repositories. It's always good when a government policy can be followed, right?

In terms of expanding that, we certainly have been very active in trying to say the same thing should be true for research data, as an example. Yes, we would say that all the outputs of research that are publicly funded, if possible, should be openly accessible as soon as possible, and openly at the beginning is always an option for the creator to take. We see a creator choice in there that allows them to declare it open right at the beginning, or sometimes there's a desire that they publish in some of these high-profile journals.

When the policy is in place, it really moves the market; it changes things. It's very important. Absolutely, we would be behind and supportive and helpful in the implementation of such policy.

● (1630)

Mr. Matt Jeneroux: Mr. McDonald, do you have comments?

Mr. Michael McDonald: We were absolutely in support of the previous government's work of building a forward and open access policy for the tri-agencies. That was something we stood on very actively and we saluted them when it was fully implemented.

Moving forward, in general terms, yes, we would be supportive across the board. Mentioning things like expanding the datasets that are shared allows for greater metadata analysis, which creates really interesting projects and has a lot of potential.

Mr. Matt Jeneroux: Ms. Shepstone.

Ms. Carol Shepstone: Yes, CRKN would also be in favour. Most of our members are members of CARL or Universities Canada, so this is a positive move and a step forward, I think, in fostering innovation and research expansion.

Mr. Matt Jeneroux: Are there any comments?

[*Translation*]

Mr. Laurent Dubois: Yes, Mr. Baylis.

I don't know whether I will surprise you by saying that we may have some reservations regarding such a policy.

If it was possible to guarantee a choice for the creator, that would be a potential option. We also don't want writers or the industry we represent to feel that we are against progress. On the contrary, we want to move forward and we want things to open up. Solutions like this one may potentially be implemented.

It will be a matter of clarifying the regulation of what could be implemented, if such a policy had to be developed. We encourage you to regulate all that as precisely as possible in order to guarantee, most importantly, the moral right of writers to refuse, if they wish to do so, their content being made available on those types of platforms.

[*English*]

Mr. Matt Jeneroux: Quickly then, I do want to talk about TPMs, or digital locks, given that they're somewhat controversial within the education sector. How does your organization suggest that Canada reconcile its obligations in favour of TMs, while ensuring that educational institutions can fully exercise their rights under fair dealing?

[*Translation*]

Ms. Suzanne Aubry: In most cases, protection techniques are ineffective. For a number of years, content has been pirated a lot. That is a major problem for which we don't have a simple solution. This will have to be carefully considered because, unfortunately, many authors are being deprived of their rights. Their work is copied and pirated by users who don't always have bad intentions. They don't realize what impact their actions may have.

Once again, it is important to regulate all this. The main thing is try to find effective ways to fight piracy.

[*English*]

Mr. Matt Jeneroux: If you can fit it in within the line of questioning that would be good. If we get one more that would be fantastic.

Ms. Carol Shepstone: CRKN members would be in favour of being able to circumvent TPMs for non-infringing purposes.

The Chair: Thank you very much.

We're going to move to Ms. Ng. You have five minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): I will be sharing my time with my colleague Dave Lametti.

Thank you, everybody, for coming and sharing this information.

I hear from the content creators and the writers, and I hear from everyone else, about having a regime that allows for greater access for young people for learning and so forth. Maybe I'll open this up, but do you have any thoughts for us, as I think about the writers and the content creators in an evolving world of innovation and further creation? The creators' work is part one, as I would call it, and other works get created from original content.

Perhaps those in the university and learning sector can talk to us about how you provide accessibility for your students in this regime, particularly when they want to be able to take, use, and create new material, essentially innovating from original content. I'd love to hear from the writers as well around how you see that use in this context.

● (1635)

Mr. Mark Swartz: For the university sector, those new exceptions that were mentioned, like the mash-up exception, the user-generated content exception, and fair dealing allow students specifically to take different works, mash them together, and create new works. These can be used, particularly with the user-generated content exception, which is really useful for student assignments, because they can create and submit new works for non-commercial purposes.

We really encourage those types of things. Mashing works together in creating new things is incredibly important for research as well, because research is built on other research. We encourage those types of exceptions that allow for those types of uses, for sure.

Mr. Michael McDonald: We obviously think this is part of the ability to be innovative in a modern economy. A lot of content generation—you can search YouTube or go pretty much to any kind of material circulated widely on the web—relies on the ability to have a frame of reference that people understand and the ability to recreate and reimagine those things. That can be in the critical.... That can be in the reimagined. We understand that in the academic setting—and this is important—that is a non-commercial setting, one that the person understands is a learning environment in which they can practice this kind of effort. This is much of what modern content creation is. This is much of what, in a field like music, is the dominant form of being able to exchange new ideas. We think this is the kind of thing that needs to be practised. We also think that it does need to come with clear instructional purposes about what kinds of rules surround it. We do think that, when it comes to IP creation, better instruction and more information being available to will be key for them to be successful in a modern economy. That's really what we'd also stress through this, that we're really happy to have more learning about this kind of stuff as well.

[*Translation*]

Mr. Laurent Dubois: We could say that, in a way, we agree with what we just heard in terms of sharing ideas to create content, to move ahead, to be a modern society. We agree on that, but when an idea is shared with someone and a decision is made jointly to carry out a project, both are in agreement to move ahead.

Once again, we believe that section 29.21 of the Copyright Act—if I have understood your question correctly, we are talking about that provision—does not respect the moral right. In my opinion, taking someone's work without their approval and modifying it to create content, creative as it may be, does not respect the moral right.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): You raised the issue of moral, and not financial, rights. You are telling us, I believe, that destination rights should be part of Canadian law.

Fair dealing does not affect authors' economic rights. In addition, the integrity of their work is not at issue. According to Canadian law, once the author has sold their work, they are not entitled to decide on its destination. That practice was rejected in the Supreme Court's decision in *Théberge v. Galerie d'Art du Petit Champlain inc.*. Integrity and authorship are the only moral rights covered in Canadian law.

What do you think about that? Do you want a destination right to be added?

Ms. Suzanne Aubry: That is your interpretation and I respect it, Mr. Lametti, but I completely disagree with that. Our moral rights are recognized.

When I sign a publishing agreement, I loan my work to the publisher and I get an advance. The work does not belong to the publisher; it is a license I negotiate with them.

Mr. David Lametti: Yes, but we are talking about an economic right here, Ms. Aubry.

Ms. Suzanne Aubry: It is the moral right....

Mr. David Lametti: With all due respect to you, I will say that most experts in the country agree with me. In Canada, moral rights are added only for integrity and authorship. There is no destination right. The Supreme Court clearly indicated as much in its Théberge ruling. When the work is sold, the economic rights are already acquired by the author, and it's done.

You are telling us that a destination right should be added to the legislation, but that has already been rejected. The idea is very innovative, but it is inapplicable in this case.

● (1640)

[*English*]

The Chair: I'm sorry. We're out of time. Perhaps we can come back to that.

We're going to move to Mr. Lloyd.

You have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you for coming out today. It's been very interesting to listen to the very informed points of view.

My first question will be directed to Ms. Haigh.

For your stakeholders, what has been the trend line in spending on copyrighted licensing and materials since 2012? Has it been going up or down, or has it been steady? What have you been observing?

Ms. Susan Haigh: In terms of the purchase of licensed material?

Mr. Dane Lloyd: Yes, what has been your budget for those things?

Ms. Susan Haigh: For the CARL, the total annual university spending is $370 million. Our figure for our 29 academic libraries is $338 million in 2016-17. This is a CARL statistic; it's reliable. This compares to 2011-12 when it was $280.5 million. It's been a steady increase.

Mr. Dane Lloyd: There has been an increase, and we're hearing from the publisher and the creator side that they're seeing less benefit because of these policies.

To what do you attribute the increase in spending? Is it that you're using more products or that it's more expensive to use these products? What is the reason that prices have gone up?

Ms. Susan Haigh: Well, prices go up. I think the licence costs have gone up over that time.

If there's a change that's been seen, from the collectives' perspective, it has to do more with the changing marketplace and the fact there is other open access content. There are other types of things happening that are much bigger than just the regular print-based price-setting kind of relationship that was there in the past. It's all changing.

Mr. Dane Lloyd: Thank you.

I'll pose the same question to Monsieur Dubois.

From your perspective, what would you say about the comments made previously? How is this affecting you? They say they're spending more, but your stakeholders don't seem to be seeing the benefit of this. Where's the loss happening?

[*Translation*]

Ms. Suzanne Aubry: That is an obvious paradox. With us being paid much less—and we gave you very concrete figures earlier—and with increased university spending on Canadian content, which we are talking about here, where is the money going?

[*English*]

Mr. Dane Lloyd: So from your perspective, you are unaware of where that money is going.

Ms. Suzanne Aubry: Well, it's not in our pockets.

Mr. Dane Lloyd: Okay.

My question then would be, and this is open to the floor, what is the impact of piracy? How significant is the impact of piracy on the price and the costs and losses you have suffered?

[*Translation*]

Ms. Suzanne Aubry: That is a good question, but it is extremely difficult to answer right now because some websites operate without following with the rules. Publishers are trying to get them shut down, but they pop up elsewhere.

It is difficult to measure their impact, but writers tell us about them. They see their work being copied, pirated by users who are difficult to catch, especially since those platforms are accessible from any country. It is not easy. That is why piracy should be considered very seriously in policies, which should find ways to fight it. The damage should be measured.

[*English*]

Mr. Dane Lloyd: There were some comments made earlier by other witnesses that we're living in a much more content-heavy world. There's a lot more content production.

Would you say that the increase in competition among content producers could be one reason your stakeholders might be realizing lower prices for their products?

[*Translation*]

Mr. Laurent Dubois: You raise a good point.

It could in fact be assumed that, individually, revenue and income are being shared among more creators. That is possible. The fact remains that, in the issues we have been discussing since earlier, we are talking about the overall envelope. What we just told you is that there is an overall envelope related to royalties in terms of education, and that envelope has gotten smaller. So it is not just a matter of distribution. As for the book industry, it is indeed possible that having more creators means less revenue for each of them—which I am fully prepared to accept—but in terms of collective management, the overall envelope has been reduced since 2012.

● (1645)

[*English*]

Mr. Dane Lloyd: Thank you.

The Chair: We're going to move to Mr. Sheehan.

You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much.

I think this is an excellent start to our study.

At our last session, at meeting 101, we heard some very interesting testimony, which is being covered off here today. I want to thank you for creating some sort of juxtaposition to it. It will help us to think.

Michael, you talked about some of the new emerging technologies that people are using. You referenced YouTube and things of that nature.

One of the things I find interesting, which was never around when I was at school nor when I taught at college—it was probably just emerging then—is the other technologies out there, in particular the 3D printing, augmented virtual reality, big data, and artificial intelligence. These are all very big things right now.

Do we need to amend the act to better support innovation and technologies of the fourth industrial revolution?

I'll start with you, Michael.

Mr. Michael McDonald: From a student perspective, we would stress that this is the kind of thing you need to make sure is flexible and adjustable and that individuals not be caught in a significant amount of red tape in what they're going to be doing, and giving some ability, especially to students, who are going to be some of the leading innovators.... They're going to be trying out new things in these environments. Making sure they are able to access content to be able to re-imagine that content is at the core of that philosophical question about what innovation is. Again, you want your political science majors to be hanging out with your welders, because it is a weird thing and they might come up with a really cool idea. This is the kind of thing you want to be able to promote, and anything that restricts that pool of information will make it more difficult for those kinds of things to occur.

I can't tell you what the next innovative new thing is going to be. If I could, I'd probably be sitting somewhere else, but we do know that it will be a result of neat ideas coming together. Anything that restricts that is something we would be concerned about.

Mr. Terry Sheehan: That's very interesting testimony. Does anybody else what to chip in there?

Carol?

Ms. Carol Shepstone: Sure. One of the comments I would make in regards to CRKN is that in our licences, we have been doing more work to allow data and text mining of the resources, which is very critical for AI. I think that would be an area where additional efforts.... We can see that impacting AI development very positively.

Mr. Terry Sheehan: Mr. Chair, I'm splitting some of my time with Lloyd Longfield.

Mr. Lloyd Longfield: Thank you for sharing your time.

I had one question that I didn't get out last time.

For the libraries, concerning the investment in the French language online streaming open access to journals, the Érudit system, is this something we need to pay more attention to? Is there enough funding to get access to French language content? This question is for anybody at the table.

Ms. Carol Shepstone: I'll respond to that. As the Érudit project or partnership with PKP in the launch of Coalition Publi.ca is in partnership with CRKN, I guess I would start by saying that there is always room for some additional investment in ensuring that we have French content, particularly French scholarly content.

That's a rather broad answer, but I think this project is a really interesting model and a transitional program that's taking scholarly content that was in subscription form and moving or transitioning that over into open access in a sustainable and supportive way. Absolutely. This was also funded through CFI and SSHRC as well, so that was really beneficial in making this shift.

Mr. Lloyd Longfield: Does current legislation cover that?

Ms. Carol Shepstone: It was a partnership that was enabled; it wasn't hindered or advanced, I would say, by the legislation.

Mr. Lloyd Longfield: In beginner's courses, we get access to information, and it gets harder and harder the further you get in, because publishers aren't covering the research and the costs of producing more scholarly journals, so we're taking American journals into beginners' courses and not having access to Canadian information as you get further along.

Do any of you have comments on that?

● (1650)

Ms. Carol Shepstone: It is certainly true that, of that $125 million, about $122 million is spent on international journals, if you will. However, I would add that many of those international journals include Canadian scholarly content. It's a really challenging analysis to pull out or parse out Canadian scholarly content in those international journals and to still balance Canadian scholarly content produced here in Canada.

Mr. Lloyd Longfield: Thank you.

The Chair: Mr. Masse.

Mr. Brian Masse: I want to follow up on that, because it was one of the questions I was thinking about. How has the response been from international journalists having been exposed to maybe a different system than elsewhere, especially with open access? Is there still an interest in getting into the Canadian market, or has it waned a little bit if there is more sharing? Has there been any response at all? We have changed our copyright in the last number of years, so what has been the response from the international community?

Ms. Carol Shepstone: In terms of international scholarly journals?

Mr. Brian Masse: Yes.

Ms. Carol Shepstone: I would say that, via CRKN and other research institutions, we will purchase whatever scholarly content we can afford and is needed, regardless of where it's produced, as long as it's supporting the research enterprise. Obviously, there's a need to support Canadian-produced scholarly content as well, but we do purchase it regardless of its origin, as long as it's affordable, if I'm understanding your question.

Mr. Brian Masse: You are kind of not a trapped customer, but you're—

Ms. Carol Shepstone: A little bit....

Mr. Brian Masse: I didn't want to say it, I guess.

I want to follow with Mr. McDonald with regard to the divergence of platforms that's taken place. What has been your experience from those who are now taking advantage of more openness in terms of actually trying to get remuneration or some of types of supports for —I guess—the compromise. You may have a different business model from what you had before.

Mr. Michael McDonald: We think that, depending on the open format you're talking about, this is going to be a changing business format. For something like an open educational resources environment, this is something that's relatively new that generally is provincially supported. It's something that, depending on the model its been based on, has been up to a few million dollars a year based on course books that were in high demand. So, if you were in a 101 course in British Columbia—a base-level course—that had high enrolment, they were going to create a textbook in that kind of environment.

The one thing about these kinds of processes is that they do snowball. The interesting thing about any kind of open format is that the next time the funding comes forward, maybe the project is to translate that textbook, or maybe the process is to make this textbook more regionally specific to interior British Columbia. These are the kinds of things this base content allows for and then you can build off in those granting models. We think that can be a very successful way of delivering really innovative content and Canada-centric content.

One of the big benefits of this material is that it can be very easily tailored. Right now, every one of us can go on the Open BCcampus site and grab those textbooks, and you'd be able to bring those forward. If professors take that, bring it into their course plan, amend it, and get approval from their department, that's delivered, and it's delivered in a really clear way to the individuals involved.

We do think that in some models there are places we are concerned about. When it comes to some of the open access discussions, we're strong supporters of it, but we do think the one thing that needs to be ensured is that especially young researchers and the emerging researchers don't have to pay the upfront fees. They're very often expected to still get published in that kind of a format, which can sometimes range up to $1,000.

Those kinds of things can be a burden and might not be expected on that original research grant, and we think those things need to be considered in those environments as well.

Mr. Brian Masse: Thank you.

Thank you, Mr. Chair.

The Chair: We have a little bit of time left, so we're going to do five minutes and, I believe, five minutes on this side as well.

Mr. Baylis, you have five minutes.

Mr. Frank Baylis: Mr. Chair, I have a simple question, and then I'll be passing it on to Mr. Graham.

From a library's perspective, it's an interesting question. Can you tell us how you think we might be able, as a government, to help you help our Canadian creators?

● (1655)

Ms. Susan Haigh: We have been in discussions with the Canadian journals and others recently. It relates to Érudit to some degree, as well. We're very interested, because we support and host journals. Canadian research libraries host more than 400 Canadian journals. We want them to survive and thrive. We're trying to figure out ways. We've had committees that have involved all of us to try to sort it out.

I think the fundamental issue is that, whilst you can do collective platforms so that you're reducing the costs of production, there are a lot of things like that. That, in some ways, is what the government is investing in with Érudit, as well; so a collective platform is a very good idea.

However, there is some cost to the production of content, and it gets a little tricky to know how best to support it. I believe that's where the government can step in. We have been talking with SSHRC about the aid to journals program and how it's reshaping itself a little bit too fast in the open access direction and to help the journals as they're transitioning. I think that's the right kind of investment from the government, because it's helpful to keep the content generating.

Mr. Frank Baylis: Thank you, Ms. Haigh.

Go ahead, David.

[*Translation*]

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

Mr. Dubois, Ms. Aubry, I have a few questions for you.

You talked about a loss of $30 million in royalties for writers who use collectives. I assume you are talking about an annual loss for all of Canada. However, the amounts universities and others spend are on the rise. You are trying to explain that paradox.

Is it possible that the reason is found in digital content and among authors who do not use collectives?

Ms. Suzanne Aubry: What we know is that it's less money for copyright holders—publishers and writers.

We specified that there may indeed be more copyright holders, which might partly explain an increase in university spending, but we don't have precise data on that. We could try to obtain it in response to your question, but we don't have it right now.

Mr. David de Burgh Graham: Okay.

However, it is known that publishers make more money now than before. Do you have an explanation for that? The drop in revenues concerns those who use collectives, and not content producers. Do you agree with that?

Mr. Laurent Dubois: The question should be put to the Association nationale des éditeurs de livres. We are unable to provide you with specific figures from the publishing industry.

Ms. Suzanne Aubry: We would really like to have those figures.

Mr. David de Burgh Graham: Pardon?

Mr. Laurent Dubois: We would also very much like to have the figures because that would have a direct impact on how much our writers make, but the question should be put to publishers.

Mr. David de Burgh Graham: Do you think software or content pirates would accept to pay for those products if access to them was sufficiently controlled? Would they instead choose to forego them?

Mr. Laurent Dubois: I think they would accept to pay for them, but I have a feeling you don't agree with me. You are asking for my opinion, and I am giving it to you. Unfortunately, I don't have more specific arguments.

Mr. David de Burgh Graham: Are you aware of the fact that the fair dealing exception for content exempts the user from requesting the author's permission?

Ms. Suzanne Aubry: Copibec could potentially answer those questions.

Generally speaking, Copibec negotiates agreements and licenses with educational institutions. When the content is used, it means that the author has given their permission because they delegated to Copibec the responsibility of negotiating that license. As long as the content is covered by a license, authors are deemed to have agreed through that license, and there is no issue.

Does that answer your question?

Mr. David de Burgh Graham: That is the beginning of an answer, yes.

[*English*]

Are you cutting me off?

The Chair: I believe that Mr. Jowhari had questions.

Mr. David de Burgh Graham: Okay. Sure.

Majid.

Mr. Majid Jowhari (Richmond Hill, Lib.): I just want to share an observation that we've made on this side. I want to get your perspective and to help us fill in the blanks.

We've noticed that the revenue or income for creators looks like it's on a downward slope. If we have a graph with timelines and revenue, what we've noticed is that creators' revenue is trending downward. It looks like expenses for libraries are going up. We talked about the $200 million and the $370 million. I've done some searching around student's expenses as they relate to the material, and I would say that these expenses are on an incline. It might be with a different slope.

I'd like your opinion on the other stakeholder group, which in my mind would be the publisher. Where would you say that revenues or costs are trending for publishers, and how would it fit in the diagram?

Michael, do you want to start?

● (1700)

Mr. Michael McDonald: I would say that, overall, the post-secondary education sector to a degree is similar to the health care sector. It just experiences a higher inflation rate. The material and inputs that go into post-secondary rise at a higher rate than general inflation. This includes any kind of academic and literature materials, and this includes a lot of the inputs that are expected at a post-secondary institution, like any kind of machinery and that kind of material. A lot of what's necessary to produce even that academic content becomes more expensive and comes through. I don't have knowledge of the publishing sector to a degree that I would feel comfortable giving you an informed answer. However, it does seem that, in an instance, both sides of this discussion are clearly feeling the pinch in this. I think this is something that is a global discussion. You are seeing these same kind of cost pushes in a variety of other markets.

Mr. Majid Jowhari: Mark, do you want to comment on that?

Mr. Mark Swartz: To understand where the library money is going, you have to understand the shifting landscape by digital disruption. There has been a profound shift in the types of contents that are being used in and purchased by libraries. One good analogy is that it's very similar to the transition that the music industry went through a couple of year ago. In the music industry, you used to buy individual MP3s and CDs, and now a lot of people are buying monthly subscriptions and getting all their music in that way, from Apple Music and Spotify. Libraries have also gone through that profound shift. Most of the money spent by university libraries isn't going to individual purchases of individual books; they're going to large corporations, and these corporations aren't often publishing scholarly works, literary works or textbooks.

Most of that money is going to five major corporations—Elsevier, Springer, Taylor & Francis, Wiley, and SAGE. They're really dominating the scholarly journal market, and they're pushing up price subscriptions. This is a major issue for academia, but it's not necessarily directly related to copyright. We feel the government can help in that regard. We'd encourage you to continue to promote open access, openly available materials. Open government initiative for crown materials is another great example of how you can keep providing support. Enhance the capacity of Canadian scholars to publish in locally run journals. Other ways that we would consider helpful, because so much of our content is licensed now, would be any ways we can use the exceptions in the act for licensed material. If we have a contract that protects works, it would be useful if we could have an override or legal ways of accessing information, like fair dealing. Or if those works are protected by technical protection measures, it would be useful if circumvention were allowed for legal purposes like fair dealing.

The Chair: Thank you.

[*Translation*]

Ms. Aubry, do you want to add anything? You have 30 seconds.

Ms. Suzanne Aubry: I would just like to make a general comment on innovation and creation.

Authors should not be forced to sacrifice royalties because, over the short or the long term, content will disappear with no creators to write it.

The Chair: Okay. Thank you very much.

[*English*]

The final question of the day goes to Mr. Lloyd.

Mr. Dane Lloyd: Thank you, Mr. Chair.

I'll be splitting my time with my colleague Mr. Jeneroux.

One observation that I've made throughout this process is what somebody once said to me, that the better the system you have, the more expensive that system will be. If we want better health care, it's going to be more expensive. I think Canada has one of the best education systems in the world, and we see that cost reflected in rising tuition rates and rising textbook rates. It seems that we're not willing to accept sub-par textbooks, and even in my time in university, textbooks were not just textbooks, but you had websites associated with them and CDs came with them. It's just amazing that there's so much more than what we were used to have in the past. That cost needs to be reflected.

Mr. McDonald, you mentioned that the education sector has higher inflation than other sectors. Can you explain what you think the causes are of that higher inflation in the education sector?

● (1705)

Mr. Michael McDonald: Obviously, the additional demands in the educational sector where you are trying to push the bounds of knowledge lead you to invest in significant machinery: the updating of buildings and of course materials, and hiring good people who are exceptionally good teachers and exceptionally good researchers to staff these facilities. All these are fought over right now in the international community. These are precious commodities and things that you are trying to be right on the leading edge of at all times, which, as in any sector, will make it more expensive.

It's also one of the reasons there are significant pushes for cost efficiencies throughout the post-secondary education sector. Governments and the public have demanded that. If these textbooks are good, are there other models? Something like an open educational resources model has demonstrated there are other really effective means by which to produce some content. So if a calculus 101 book, which has very consistent content, can be built on in a public environment, it can be very successful. It will be rated just as good as the textbooks purchased in other situations.

We think, again, that this is part and parcel of operating in a public environment and something in which, overall, we think all of the actors want make sure they are getting the most bang for their buck —and that includes the public. That is one we understand. We also understand that we will all still need to look to those kinds of efficiencies to make this both effective and affordable for everyone.

Mr. Dane Lloyd: In your response to an earlier question, you had alluded to alternative mechanisms for compensating creators. Could you maybe tell the committee of some examples you can think of?

Mr. Michael McDonald: This is also different depending on the creator. When discussing this, I also think it is incredibly important to recognize that different creators in different spheres will need different mechanisms. Obviously, in some forms of research, tri-agency funding and real commitment to scientific research in the country is key and making sure that's well supported. When it comes to things like a public lending right, other mechanisms by which we can provide compensation could include grants to create certain kinds of textbooks. Again, provinces are doing this right now, and these are mechanisms that could be used. These are going to be different, depending on the sphere they're going to be working in, and we think they need to be best tailored to those environments.

Mr. Dane Lloyd: Okay.

That last question goes to you.

Mr. Matt Jeneroux: Monsieur Dubois and Madame Aubry, you answered a question on the technological protection measures and gave your position on those. How do you reconcile your position when this falls under the WIPO and the Berne convention—those international agreements? I'm hoping you can clarify your position on those.

There's a dramatic pause.

[*Translation*]

Mr. Laurent Dubois: Could you repeat the question? I'm sorry, but I did not understand it.

[*English*]

Mr. Matt Jeneroux: In an earlier question you were asked about technological protection measures. You stated your position on that. I am just hoping that you can reconcile that position, that we fall under WIPO and under the Berne convention—the international agreements. How do you reconcile your position on TPMs, digital locks, under those agreements?

[*Translation*]

Mr. Laurent Dubois: I cannot answer you right now because your question concerns technical considerations for which we have no answer.

● (1710)

[*English*]

Mr. Matt Jeneroux: Okay, sure.

The Chair: On that note, I would like to thank all of our witnesses for coming in. As we said, it will be a long study. I thought that the information provided today was very valuable. When I see my analysts busy writing notes, it means that good information is coming through. And they're smiling, which is a good thing.

On that note, I wish to thank you all very much for coming. We will adjourn for the day.

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